

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

MARY E. ROHER,)

Complainant,)

and)

C & S DIRECT ADVERTISING,)

Respondent.)

CHARGE NO(S): 2005SN3919
EEOC NO(S): N/A
ALS NO(S): S06-249

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 9th day of February 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield, Illinois on April 11, 2007. The parties have filed post-hearing briefs. Accordingly, this matter is ready for a decision.

Contentions of the Parties

In the instant Complaint, Complainant asserts that she was the victim of handicap discrimination when Respondent failed to accommodate her request to take time off from her office manager position to undergo chemotherapy treatments for her cancer condition and subsequently terminated her from her job. Respondent, however, maintains that the side effects from Complainant's chemotherapy treatments precluded her from performing her job in an acceptable manner, and that its act of sending Complainant home with pay and directing her to come back to work when she was able to do her job duties was not a materially adverse act that could support a cause of action under the Human Rights Act. It similarly maintains that Complainant's refusal to report back to work after she had completed her chemotherapy treatments constituted a voluntary resignation from her job that precludes recovery under the Human Rights Act.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. Complainant began her employment with Respondent in January of 1992. At that time, Complainant did general office work that included entry of various orders, shipping and receiving of promotional items, as well as making certain accounting entries.

2. At all times pertinent to the instant Complaint, Respondent operated a promotional products distributor business that entailed the placing of orders for promotional items with third-party vendors on behalf of Respondent's customers.

3. By 1994, Complainant was given more duties that included working on Respondent's payroll, as well as its accounts receivable and payables. Thereafter, until sometime in 2000, Complainant generally worked by herself in Respondent's office.

4. At some point in 2000, Linda Craig was hired to perform work in Respondent's office. At that time, Craig was assigned to do order entry and invoicing for the State Farm account, while Complainant was responsible for placing orders and invoicing of all the other accounts. Complainant continued to perform all the other duties she had been performing prior to Craig's hiring, including the payroll and monthly profit/loss statements.

5. In August of 2004, Complainant informed Michael Campbell, Respondent's owner, that she had colon cancer, which required that she undergo surgery and perhaps a series of chemotherapy treatments. At that time, Campbell told Complainant to get the treatment and to come into work whenever she could.

6. On October 8, 2004, Complainant had surgery to remove the cancer and stayed home for the next two weeks.

7. At the time of Complainant's surgery, Respondent did not have a formal procedure that kept track of the number of sick days that Complainant used during a

year, and Respondent paid Complainant her regular salary for the time spent while undergoing surgery and recuperating at home.

8. Shortly after her surgery, Complainant informed Campbell that she would be required to undergo a series of chemotherapy treatments, which, in turn, required that she be away from the office approximately a day and a half every two weeks for a ten to twelve week cycle. Campbell told Complainant to take as much time as she needed.

9. Complainant began her chemotherapy treatment on November 10, 2004.

10. Beginning in November of 2004 and continuing through December of 2004, Complainant experienced adverse side effects from the chemotherapy that caused her to become weak and drowsy at work. During this time period, Complainant took periodic breaks throughout the work day by laying her head on her desk or by lying down on an inflatable mattress that Campbell had brought into the office on her behalf.

11. Throughout the November 2004 to December 2004 time period Campbell observed that Complainant was not performing her job at a level at which she was performing prior to the date of her cancer diagnosis. Specifically, Campbell noted that Complainant's performance level began to suffer in terms of her productivity and concentration levels.

12. By November of 2004, Complainant had been responsible for the handling of the CM Promotions account in terms of placement and invoicing of orders made on behalf of CM Promotions. At all times relevant to the instant case, Connie Mandula was the president and sales person for CM Promotions.

13. By December 2, 2004, but sometime after Complainant had told Campbell about her cancer diagnosis, Mandula expressed a concern to Campbell that Respondent was not appropriately handling its administrative responsibilities with respect to the CM Promotions account. On December 2, 2004, Mandula drafted a memorandum to Campbell inquiring as to the normal turn around time for placement of

orders on behalf of CM Productions. Specifically, Mandula asserted that recent orders had been entered as much as a week after they had been tendered for placement. She also claimed that although Respondent was responsible for making timely payments to vendors, she had to make certain payments to avoid late fees plus pay interest for payments that were not being made in a timely fashion by Respondent.

14. Mandula also noted in her December 2, 2004 memorandum to Campbell that CM Promotions had ordered approximately \$388,815.97 from Respondent, which translated into 153 orders that generated about \$200 in fees per order for Respondent. She further indicated that while she had not previously mentioned anything about the late orders “[g]iven the special circumstances”, she suggested that Respondent reduce its fees for orders not processed in a timely fashion.

15. At the time of Mandula’s December 2, 2004 memorandum, Campbell understood that Mandula was talking about Complainant’s failure to enter orders and to generate invoices in a prompt manner. Moreover, at all times relevant to the instant Complaint, the practice at Respondent was to process orders by the next day after they had been received.

16. At all times pertinent to the instant Complaint, Campbell required that Complainant and Craig promptly bill clients through invoices, because unbilled accounts threatened Respondent’s ability to pay its vendors, which, in turn, jeopardized shipments of future orders for all of Respondent’s customers.

17. Campbell did not relay to Complainant Mandula’s concern about Complainant’s actions/inactions taken with respect to the CM Promotions account at the time of Mandula’s December 2, 2004 memorandum or relay his own concerns about Complainant’s productivity because he did not want to add to Complainant’s stress associated with her cancer treatments, and because he believed at that time that Complainant would get better.

18. On December 17, 2004, Complainant traveled to San Francisco, California for a pre-planned vacation. Complainant was scheduled to come back on December 28, 2004, but called Respondent's office on December 27, 2004 and told Craig that she would not be back on December 28, 2004 as planned because she had been hospitalized in San Francisco. Craig relayed Complainant's message to Campbell.

19. Complainant came into Respondent's office on December 30, 2004 at around 12:30 p.m. At the time Complainant had entered Respondent's office, she was intending to inform Campbell that she would not be working that day, but that she would be coming into work the following day to do the payroll, as well as the end of the month reports.

20. At the time Complainant went into work on December 30, 2004, she was in a weakened condition that required that her husband drive her a distance of fifteen miles to work. Complainant also experienced difficulty in walking up the seven to eight steps needed to reach her desk.

21. When Campbell observed Complainant arrive at the work site on December 30, 2004, he decided that Complainant could not continue to work in her current condition, and that Complainant needed to spend more time away from the work site to recuperate from her cancer condition. Campbell based his decision on the deterioration of Complainant's physical condition subsequent to her leaving on her vacation, as well as the decline in her work performance prior to her vacation.

22. Shortly after Complainant arrived at the work site on December 30, 2004, Campbell directed her and her husband to the conference room to discuss a leave of absence. During the meeting, Campbell indicated to Complainant that based on her physical condition, as well as the best interests of the business and her health, she needed to go home and get better. He also told her that he would be issuing her a regular pay check for the second half of December, plus a check for her regular year-

end bonus, as well as an additional salary check for the month of January 2005. Campbell did not discuss whether Complainant would receive a paycheck following the end of January 2005 if she still felt unable to come into work, because he was not sure when Complainant would be coming back to work.

23. After Campbell informed Complainant during the December 30, 2004 meeting that he wanted her to go home, Complainant asked Campbell if he was terminating her, and Campbell replied that he was not terminating her, but that Complainant was to get in touch with him about her job duties once she was finished with her chemotherapy and felt like coming back into work.

24. On December 31, 2004, Campbell drafted a letter to Mandula, indicating that Complainant would not be coming back into the office anytime soon and that she was on an "unpaid leave of absence." He also indicated that he made the decision to place Complainant on a leave of absence due to the errors that he had observed over the last four to five weeks and due to his perception that the errors would not correct themselves. Campbell further stated that the goal was to get back to the "administrative ability" that Respondent held prior to Complainant's illness, and that because Craig was new at doing the administrative duties, Mandula was to go through Campbell to get the process started.

25. On December 31, 2004, Campbell issued Complainant a check for \$1003.72, which represented her regular bi-monthly salary, as well as a check for \$2,871.69, which represented Complainant's year-end bonus, and a check for \$2,163, which represented one month's salary for January of 2005.

26. Throughout the month of January, 2005 and into February of 2005 neither Complainant nor Campbell contacted each other about Complainant's return to work.

27. At some point in mid-February of 2005, Complainant filed for unemployment benefits with the Illinois Department of Employment Security (IDES).

28. On March 18, 2005, Complainant wrote the following note to Campbell:

"Mike- Enclosed are the keys to the office and PO Box. I'm sorry for the delay in getting them to you. I completely forgot I had them."

29. At some point prior to March 23, 2005, Campbell wrote Complainant the following letter:

"Mary,

Thanks for returning the two keys. Just a note to confirm information shared during the recent telephone conference with the State of Illinois Employment people. You are welcome to contact me when you are feeling better and able for some form of employment.

Also, enclosed is a photocopy of a fax received from Quantumlink dated March 22 confirming that the residential line of Ron Roher...has been deleted from the C & S account. Note that the long distance service has already been cancelled. Perhaps you should make arrangements for another provider for local and long distance service within the next few days. I hope you are feeling better."

30. At some point in April of 2005, Complainant sent the following note to Campbell:

"Mike,

I received your note regarding a possible job after chemo is completed. Due to dosage adjustments and blood results I have had to postpone chemo a few times, therefore my sessions will not be completed until September. I will contact you then."

31. At some point after Complainant sent her April 2005 note to Campbell, but before June of 2005, Complainant sent the following note to Campbell:

"Mike,

Scott [Complainant's son] informed me he telephoned you. He believed it was a very positive and informative discussion. He also indicated that both of you felt that miscommunications seems to be a major factor in our disagreement. In honoring your request, I will wait until my chemotherapy is complete before contacting you. Sincerely, Mary"

32. In May or June of 2005, Mandula told Campbell that she was not seeing the improvement in service that she wanted, and that she would be discontinuing the

use of Respondent's services. Mandula eventually discontinued all use of Respondent's services in December of 2005 and became a competitor.

33. Complainant completed her chemotherapy in June of 2005. She did not contact Campbell after its completion.

34. In July of 2005, Complainant began working at Starnet Digital Publishing.

35. At the time Complainant took another position at Starnet Digital Publishing, Campbell had not hired any full-time replacement for Complainant and was still expecting Complainant to return in some capacity to Respondent.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Complainant failed to establish that she was a qualified individual under the handicap provisions of the Human Rights Act in that she failed to show that she was capable of performing the essential duties of her office manager position during her chemotherapy treatment with or without a reasonable accommodation.

4. Respondent has articulated a legitimate, non-discriminatory reason for its decision to force Complainant into taking a medical leave of absence.

5. Complainant failed to prove by a preponderance of the evidence that the reason given by Respondent for forcing Complainant to take a medical leave of absence is a pretext for handicap discrimination.

Determination

Complainant has failed to establish by a preponderance of the evidence that Respondent violated section 2-102 of the Human Rights Act (775 ILCS 5/2-102) when it forced Complainant to take a medical leave of absence.

Discussion

Preliminary matter.

One of the issues presented in this case is whether Complainant was terminated on December 30, 2004, when Campbell told Complainant to go home until she was physically able to return to work in some capacity. That same issue apparently was addressed at an IDES hearing on Complainant's February 2005 application for unemployment compensation benefits, and both parties wished to proffer for substantive and impeachment purposes various statements made during the IDES hearing to support their respective positions in this case. However, in *Borling v. Wildwood Industries, Inc.*, IHRC, 4461(M), January 6, 1995, the Commission addressed an identical issue regarding the admissibility of an IDES transcript to impeach certain witnesses at the public hearing. In finding that said transcript was inadmissible pursuant to section 1900(A) of the Unemployment Insurance Act (820 ILCS 405/1900(A)), the Commission observed that the IDES transcript could not be used, even for purposes of establishing credibility. (*Borling*, slip op at 6.) Indeed, the terms of section 1900(A) clearly state that "information obtained from any individual or employing unit during the administration of this Act shall...not be admissible in evidence in any action or proceeding other than one arising out of this Act." Accordingly, when making factual determinations in the instant case, I did not consider any evidence arising out of Complainant's IDES hearing.

The merits.

This case presents an interesting issue as to whether an employer can send home an employee on an involuntary medical leave of absence, even when the employee is suffering under a medical condition that is potentially covered under the Human Rights Act. In the instant Complaint, Complainant asserts the following two related theories for recovery under the handicap provisions of the Human Rights Act: (1)

that Respondent violated its duty to accommodate her cancer condition by involuntarily sending her home, rather than continuing to allow her to set aside time from work to continue her chemotherapy treatments; and (2) that Respondent discriminated against her on the basis of her handicap by terminating her outright, rather than permitting her to continue her work while undergoing her chemotherapy treatments. Respondent, however, submits that the Human Rights Act allows it to involuntarily send Complainant home on a forced medical leave of absence because she was not performing up to its expectations even after providing Complainant with various accommodations in the workplace. Moreover, it submits that Complainant constructively quit her position by ignoring Campbell's requests to come back to work at a time when she was physically able to perform her job. After reviewing the record, I agree with Respondent that Complainant has not established a *prima facie* case of handicap discrimination under the Human Rights Act since I find that, even with the accommodations in place in the workplace, Complainant was not performing her job up to Campbell's legitimate expectations at the time he sent her home to recover from her chemotherapy treatments. Additionally, I find that Complainant was not "terminated" as that term is contemplated under the Human Rights Act.

To understand why Complainant loses on her handicap claim, it is necessary to first note that in a case alleging discrimination based on an employee's handicap, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Illinois Human Rights Act. (See, for example, *Van Campen v International Business Machines Corp*, 326 IllApp3d 968, 762 NE2d 545, 260 IllDec 886, (1st Dist, 1st Div 2001) and *Ner and Illinois State Medical Society*, IHRC, 2430, February 25, 1992.) Under this approach, the Complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. Then, the burden shifts to the Respondent to articulate a legitimate, non-discriminatory reason

for the adverse action taken against the Complainant. If the Respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (see, *Texas Department of Community Affairs v Burdine*, 450 US 248, 101 S Ct 1089, 67 LEd2d 207 (1981)), and the Complainant is required to prove by a preponderance of the evidence that Respondent's articulated non-discriminatory reason is a pretext for unlawful discrimination.

As with any handicap claim, the elements of a *prima facie* case will vary according to the specific claim. Generally, in establishing a *prima facie* case of handicap discrimination under the Human Rights Act, a complainant must show that: (1) she is handicapped within the definition of the Human Rights Act; (2) her handicap is unrelated to her ability to perform the functions of the job she was hired to perform or, if the handicap is related to that ability to perform, after her request, the employer has failed to make a reasonable accommodation which was necessary for her performance; and (3) an adverse job action was taken against Complainant related to her handicap. See, *Van Campen*, 762 NE2d at 551, 206 IllDec at 892.

In the instant matter, the parties have focused on the element as to whether Complainant's cancer condition was related to her ability to perform her job, and whether Respondent failed to make a reasonable accommodation which was necessary for her job performance. In the instant Complaint, Complainant alleged that she "had no [negative] reactions or side effects from the chemotherapy treatments and was able to perform her assigned duties with a reasonable accommodation." However, I did not believe her in this regard since the record showed that Complainant had adverse side effects from her chemotherapy treatments that took her away from her job duties and required that she take rest periods of varying lengths of time both at her desk and on an inflatable mattress that Campbell had brought into the work place to accommodate Complainant's condition. Moreover, while Complainant reluctantly conceded at the

public hearing that maybe there were a "couple of times" that she had to use the inflatable mattress, but only during her lunch hour, I found Campbell and Craig more believable that Complainant had to rest many times either at her desk on the inflatable mattress because she was having a difficult time staying alert at work. Tr at 197.

More important, there was evidence during the public hearing that Complainant's job performance had actually declined during the period in which she was undergoing chemotherapy. Specifically, Campbell testified that Mandula had come to him with examples of where Complainant was delaying the entry of orders, as well as failing to pay some of CM Promotions vendors, which required that Mandula pay said vendors out of her own pocket. Complainant really has no answer to Campbell's testimony in this regard other than to assert that: (1) she believed she performed her job duties in terms of order entries, invoices, and job quotes with the same level of accuracy during her chemotherapy as she did prior to her cancer diagnosis; and (2) she could not have had any serious job deficiencies because Campbell did not complain to her about her job performance at any time during her tenure at Respondent. Mandula's December 2, 2004 memorandum to Campbell, though, supports Campbell's testimony with respect to Complainant's decline in job performance since it noted Complainant's failure to timely enter orders, pay vendors and/or process invoices.¹ In this regard, Complainant would have been better off for purposes of her handicap claim by claiming that these same deficiencies occurred prior to her cancer diagnosis. Yet, Campbell's un rebutted testimony indicates that Complainant was an exemplary employee prior to her cancer

¹ Campbell provided other examples of errors in orders made by Complainant during the November and December 2004 time frame. While Campbell did not discover these errors until sometime in January of 2005, thereby precluding said errors from forming a basis of his decision-making process at the end of December 2004, said errors nevertheless counter Complainant's claim that she was actually performing her job in an acceptable manner during the time period she was undergoing chemotherapy treatment.

diagnosis with no complaints concerning any of the areas identified in Mandula's memorandum as being deficient.

Moreover, while Campbell's failure to confront Complainant with her job deficiencies could be evidence that they did not exist, Campbell testified that he did not want to confront her with them because he realized that Complainant was undergoing a difficult time with her chemotherapy treatments. Indeed, Mandula's December 2, 2004 memorandum similarly notes that she too did not say anything directly to Complainant about her delay in processing CM Promotions orders because of her "special circumstances." Therefore, where both Complainant's supervisor and one of Respondent's frequent customers was aware of a decline in Complainant's job performance to the point that the customer made an inquiry concerning a potential reduction in Respondent's fee, I cannot say that Campbell's failure to mention Complainant's job deficiencies to her was evidence that they did not occur. Rather, the record supports a finding that Campbell was attempting to be compassionate to one of his employees, who was undergoing a difficult time with a difficult diagnosis. Accordingly, for all of the above reasons, I find that Campbell could have reasonably believed that the side effects of the Complainant's chemotherapy treatment for her cancer condition were having a deleterious effect on her job performance.

The question remains, though, as to whether Complainant was still performing at an acceptable level while undergoing chemotherapy and whether Campbell did enough to accommodate Complainant's cancer condition to allow her to perform at an acceptable level. In this regard, it is clear that once Campbell became aware of Complainant's cancer diagnosis, he took several steps at accommodating her cancer condition by: (1) providing paid time off for Complainant's cancer surgery; (2) providing paid time off for Complainant's chemotherapy treatment during the months of November and December 2004; and (3) supplying an inflatable mattress so that Complainant could

rest during the work day whenever she became too tired to continue her job duties. Complainant does not dispute that Campbell provided all of these things to assist her after she received her cancer diagnosis and does not suggest with any particularity what more Campbell should have done within the workplace setting to assist her in performing her tasks in a more timely and accurate manner.

Indeed, from this record, it appears that Complainant is arguing that Campbell should have allowed her to continue to perform her job because, in her mind, the job was getting done, albeit at a reduced level. But how can that ever be a reasonable accommodation when the focus of any accommodation question revolves around whether the employer has provided mechanisms for getting the employee back to performing at an acceptable level? (See, for example, *Buchman and State's Attorney Appellate Prosecutor*, IHRC, 04-022 (March 23, 2007), slip op at 26-27, aff'd under *Buchman v Illinois Human Rights Commission*, 5-07-0604, Rule 23 Order, December 4, 2008.) Indeed, the record shows that Campbell was clearly bothered by Mandula's December 2, 2004 memorandum that noted the performance deficiencies of Complainant in terms of the timeliness of her orders, invoices and payments to vendors, and Campbell explained in his December 31, 2004 memorandum to Mandula that placing Complainant on a leave to absence was "necessary to insure [that Respondent] gets back to the level of service [that] I expect." Moreover, because the Commission does not act as a super-personnel agency, the employer, as opposed to the employee or the Commission, is the one who generally gets to make the call as to whether the employee is performing up to acceptable standards.

Thus, it is enough to say that, given Complainant's past performance deficiencies, Campbell could reasonably conclude at the December 30, 2004 meeting that Complainant would not be able to continue performing her job at an acceptable level given her recent hospital stay while on vacation, her two-day delay in coming back to

work, and her recent physical decline as demonstrated by her difficulty in negotiating the steps to her desk. Accordingly, I find that Complainant has failed to establish a *prima facie* case of handicap discrimination since: (1) Complainant's cancer condition, including any treatment thereof, was related to her ability to perform the essential duties of her job because her condition manifested itself in a job performance that failed to meet Campbell's legitimate expectations (see, 56 Ill Admin Code, Ch II, §2500(d)(2)); and (2) Complainant's suggestion that she be allowed to continue her job was not a reasonable accommodation when the record shows that she was not performing her job at an acceptable level.

So Campbell did not violate the Human Rights Act, as alleged in Count I, when he sent Complainant home on a forced medical leave of absence with a month's advance on her salary. Complainant's claim in Count II of her Complaint that Campbell terminated her at the December 30, 2004 meeting as a result of her cancer condition is also without merit since, as noted above, Complainant failed to establish that she could have performed her job in an acceptable manner at the time she was sent home. Alternatively, I agree with Respondent that Complainant failed to establish that she was "terminated" as a result of the December 30, 2004 meeting in light of Campbell's testimony that he merely placed Complainant on a leave of absence, gave her a month's pay in advance², and told her to contact him whenever she felt able to come back to work. In this regard, Campbell's direction for Complainant to contact him when she could physically perform her job is inconsistent with the notion of a termination, and Complainant conceded that she was aware after the December 30, 2004 meeting that all

² Complainant testified that she did not know why she got a third check at the end of December of 2004 totaling \$2,163.84 and "assumed" it was a severance check because, according to Complainant, Campbell never mentioned it during the December 30, 2004 meeting. (Tr at 143.) However, due to the sizable amount of the check, I find it more believable that Campbell actually informed Complainant about the nature and purpose of the third check.

she had to do to resume her employment with Respondent was to contact Campbell whenever she felt more able to resume some sort of employment with Respondent.

Still, the end result of the December 30, 2004 meeting was Campbell's decision not to allow Complainant to perform her office manager position, at least for the near future, and the record is unclear as to what jobs, including her office manager position, Complainant could have performed had she complied with Campbell's instructions to return to work whenever she felt physically able to do so. Yet, this vacuum in the record does not help her handicap claim under circumstances where Complainant was unable to perform her office manager job in an acceptable manner on the day she was forced to go on a medical leave of absence. Moreover, while Complainant testified that Campbell had already ruled out her return to work as the office manager at the December 30, 2004 meeting, the credible evidence in the record does not support Complainant's testimony in this regard since: (1) both Campbell and Craig testified that they anticipated Complainant coming back to work in some capacity; (2) Campbell indicated in his December 31, 2004 letter to Mandula that he was only placing Complainant on a leave of absence; and (3) Campbell never hired a permanent replacement for Complainant, but rather took only temporary measures of bringing in part-time individuals to assist Craig in performing Complainant's office manager duties, with the expectation that Complainant would contact him whenever she was able to return to work. (Tr at 200.)

True enough, Complainant's filing for unemployment benefits, as well as the notes between the parties subsequent thereto had complicated any return by Complainant to the workplace. However, Complainant's insistence in the days following her IDES hearing that she would be contacting Complainant about employment whenever she completed her chemotherapy sessions, her retention of the office keys until Spring of 2005, and her belated concession in her last note to Campbell that there may have been a "miscommunication" regarding her job status only reinforce a finding

that no termination occurred here. Thus, contrary to Complainant's claim that she was "terminated" from her office manager position, I find that the record shows at most a voluntary choice by Complainant not to contact Campbell regarding her office manager position that occurred at some point after she had obtained the physical ability to do so. As such, I find that Complainant cannot obtain a recovery under the Human Rights Act based on Count II of her Complaint.

Recommendation

For all of the above reasons, I recommend that the instant Complaint and the underlying Charge of Discrimination of Mary E. Roher be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 6TH DAY OF APRIL, 2009